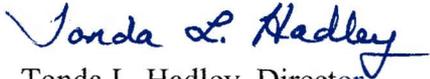




Homeland Security

January 06, 2010

MEMORANDUM FOR: Tony Russell, Regional Administrator
FEMA Region VI

FROM: 
Tonda L. Hadley, Director
Central Regional Office

SUBJECT: *City of Albuquerque, New Mexico*
FEMA Disaster Number 1514-DR-NM
Public Assistance Identification Number 001-02000-00
Audit Report Number DD-10-03

We audited public assistance funds awarded to the City of Albuquerque, New Mexico (City). Our audit objective was to determine whether the City accounted for and expended Federal Emergency Management Agency (FEMA) grant funds according to federal regulations and FEMA guidelines.

The City received an award of \$4.14 million from the New Mexico Department of Homeland Security and Emergency Management (NMDHS), a FEMA grantee, for damages resulting from severe storms and flooding that occurred during April 2-11, 2004. The award provided 75% funding for three large and one small project.¹ We audited all projects under the award (see Exhibit A). The audit covered the period April 2, 2004 through June 26, 2007, the final payment date. During this time the City claimed \$4.14 million for direct program costs.

We conducted this performance audit under the authority of the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

¹ Federal regulations in effect at the time of the disaster set the large project threshold at \$54,100.

We interviewed FEMA, NMDHS, and City officials; we reviewed transactions (generally based on dollar value) of the City's claimed costs; and performed other procedures we considered necessary to accomplish our objective. We did not assess the adequacy of the City's internal controls applicable to its grant activities because it was not necessary to accomplish our audit objective. We did, however, gain an understanding of the City's grant accounting system for disaster-related costs.

RESULTS OF AUDIT

The City did not account for and expend FEMA grant funds according to federal regulations and FEMA guidelines. The City did not always follow federal procurement standards, did not document all claimed costs, and its claim included ineligible and duplicate costs. As a result, we questioned \$1,508,369 (\$1,131,277 FEMA share).

Finding A: Contracting Procedures

The City did not follow federal procurement standards in awarding and administering \$1.13 million for disaster-related contract work. As a result, full and open competition did not occur, and FEMA had no assurance that the City paid reasonable prices. The City properly procured \$2.93 million of contracts. However, for four contracts totaling \$1,130,131, the City did not follow federal procurement standards and FEMA guidelines. Exigent circumstances did not exist to justify the City's non-compliance with those standards and guidelines. Therefore, we questioned the \$1,130,131 as improper contracting costs.²

Federal procurement standards at 44 CFR 13.36 require, among other things:

- Performance of procurement transactions in a manner providing full and open competition except under certain circumstances. One allowable circumstance is when there is a public exigency or emergency for the requirement that will not permit a delay resulting from competitive solicitation. (13.36(c)(1) and (d)(4)(i))
- Sub grantees shall not use time-and-material (T&M) contracts unless a determination is made that no other contract is suitable and provided that the contract includes a ceiling price that the contractor exceeds at its own risk. (13.36(b)(10))
- A cost or price analysis in connection with every procurement action, including contract modifications. (13.36(f)(1))

² The \$1,130,131 also includes \$383,658 questioned in Findings B and C. Therefore, the net amount questioned in Finding A is \$746,473 (see Exhibit B).

In addition, FEMA's *Public Assistance Guide* (FEMA 322, October 1999), page 40, states, "FEMA provides reimbursement for three types of contracts.³ They are:

- lump sum contracts for work within a prescribed boundary with a clearly defined scope and a total price;
- unit price contracts for work done on an item-by-item basis with cost determined per unit; and
- cost plus fixed fee contracts, which are either lump sum or unit price contracts with a fixed contractor fee added into the price."

The City spent \$4.06 million for contract work to restore sanitary services using 16 contractors. The City properly procured \$2.93 million of contract work using 12 contractors. However, for four contracts totaling \$1,130,131 the City did not procure the services according to federal procurement standards and FEMA guidelines. The City issued change orders for disaster work on three pre-disaster unit price contracts on a time and materials (T&M) basis and requested bids on a T&M basis on one contract. The City used these T&M contracts without determining that no other contracts were suitable and did not include a ceiling that the contractors exceeded at their own risk.

In addition, the City provided no evidence of monitoring T&M contract work. FEMA's *Public Assistance Guide* (FEMA 322, October 1999), page 40, states that applicants must carefully monitor and document contractor expenses. Further, 44 CFR 13.36(b)(2) requires sub grantees to maintain a contract administration system that ensures contractors perform according to the terms, conditions, and specifications of their contracts or purchase orders. City officials stated that they monitored the contractors by reviewing their invoices. Reviewing the work and invoices may be appropriate for lump-sum or fixed-unit price contracts, but it is not sufficient for T&M contracts.

T&M contracts present higher risks than unit-price contracts because they provide a disincentive for saving costs—the more hours charged to a project, the greater the contractor's potential profit. Therefore, the City should have mitigated these higher risks by monitoring and documenting contractor activities while the work was being performed. Without such documentation, the City had no records to compare to contractors' invoices for hours worked and equipment used.

The City also did not always prepare a cost or price analysis on each procurement action, including contract modifications (change orders), and, in some instances, relied on contractor-prepared estimates. Unless the City prepares independent cost estimates, it has no basis to determine whether costs are reasonable for the defined scope of work or whether the contractors understood the defined scope of work.

³ At the time of the disaster, FEMA had not yet issued the June 2007 *Public Assistance Guide*, which contains the same wording on pages 52-53.

Finding B: Documentation

The City's claim included \$583,089 in contracting costs that were unsupported. The City provided a summary of contractor-billed material, equipment, and labor costs, but did not provide timesheets, equipment utilization logs, or invoices to support the labor, equipment, and material charges claimed. Federal regulations require sub grantees to maintain records that adequately identify the source and application of funds and to maintain accounting records supported by source documentation, such as cancelled checks, paid bills, payrolls, time and attendance records, and contract documents (44 CFR 13.20(b)(2) and (6)). Therefore, we questioned \$583,089 of unsupported costs.

Finding C: Contractor Markups

The City's claim included \$176,838 of markups on contract labor, equipment, material, and subcontract costs up to 12%. Markups are a form of cost-plus-a-percentage-of-cost contracts, which are prohibited by federal regulations (44 CFR 13.36(f)(4)). Therefore, we questioned \$176,838 as ineligible.

Finding D: Duplicate Costs

The City's claim included \$1,969 of duplicate contract costs. The City claimed the \$1,969 twice using invoices and a purchase order as support. Federal regulations require that payments under large projects be based on actual costs incurred for eligible work (44 CFR 206.205(b)). Therefore, we questioned the \$1,969 as a duplicate cost.

RECOMMENDATIONS

We recommend that the Regional Administrator, FEMA Region VI:

1. Disallow \$746,473 of improper contracting costs (see Exhibit B).
2. Disallow \$583,089 of unsupported costs.
3. Disallow \$176,838 of ineligible costs.
4. Disallow \$1,969 of duplicate costs.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

On January 4, 2010, we discussed the results of our audit with FEMA officials, who concurred with findings B, C, and D but withheld comment on Finding A. We also discussed the results of our audit with NMDHS and City officials on January 4, 2010. NMDHS officials concurred with all findings. However, the City did not concur with any of the findings. Please advise this office by March 8, 2010, of the actions planned or taken to implement the recommendations, including target completion dates for any planned actions. Significant contributors to this report were Paige Hamrick, Sharon Snedeker, and Jim Nelson. Should you have questions concerning this report, please contact me, or your staff may contact Paige Hamrick, Audit Manager, at (214) 436-5200.

cc: Audit Liaison, FEMA Region VI
Audit Liaison, FEMA (Job Code DG9C10)

EXHIBIT A

Schedule of Audited Projects
The City of Albuquerque, New Mexico
FEMA Disaster Number 1514-DR-NM

<u>Project Number</u>	<u>Award Amount</u>	<u>Finding A</u>	<u>Finding B</u>	<u>Finding C</u>	<u>Finding D</u>	<u>Questioned Costs</u>
32	\$ 700,663	\$ 0	\$ 17,424	\$ 71,771	0	\$ 89,195
45	273,795	15,724	110,900	19,266	0	145,890
53	12,678	0	0	0	0	0
83	<u>3,152,436</u>	<u>1,114,407</u>	<u>454,765</u>	<u>85,801</u>	<u>1,969</u>	<u>1,656,942</u>
Totals ⁴	<u>\$4,139,572</u>	<u>\$1,130,131</u>	<u>\$583,089</u>	<u>\$176,838</u>	<u>\$1,969</u>	<u>\$1,892,027</u>

⁴ The \$1,130,131 also includes \$383,658 questioned in Findings B and C. Therefore, the net amount questioned in Finding A is \$746,473 and the total amount questioned, net of costs questioned twice, is \$1,508,369 (see Exhibit B).

EXHIBIT B

Costs Questioned Under Multiple Criteria
The City of Albuquerque, New Mexico
FEMA Disaster Number 1514-DR-NM

We questioned costs in our report related to contracting procedures (Finding A) that, in some instances, were questioned for more than one reason. Recommendation 1, which relates to Finding A, was to disallow questioned costs net of \$383,658 also questioned in Findings B and C.

As shown in the table below, Finding A questions \$1,130,131, which includes \$87,230 also questioned in Finding B and \$296,428 also questioned in Finding C. Therefore, if FEMA does not disallow these costs for Findings B and C, it should add them back to the amount recommended for disallowance for Finding A.

Finding	Amount	Totals
A. Contracting Procedures: Less costs also questioned in B Less costs also questioned in C Net amount questioned in A	\$1,130,131 (87,230) <u>(296,428)</u>	 \$ 746,473
B. Documentation	\$ 583,089	\$ 583,089
C. Contractor Markups	\$ 176,838	\$ 176,838
D. Duplicate Costs	\$ 1,969	\$ 1,969
Net Total Questioned		<u>\$1,508,369</u>